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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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TIMOTHY N. JOHNSON,

Plaintiff,

v.

THE CBE GROUP, INC. D/B/A CBE
GROUP,

Defendant.

CASE NO.: 2:18-CV-00876 KJD-NJK

STIPUALTED PROTECTIVE ORDER

Plaintiff Timothy N. Johnson ("PLAINTIFF") and Defendant The CBE Group, Inc. d/b/a CBE Group ("CBE") (collectively "the Parties"), by and through their undersigned counsel, stipulate and agree that discovery in the above-entitled civil action ("Action") may involve the production of documents and/or information that the Parties may consider to be confidential, proprietary, and/or protected by statutory or other legal privileges. Accordingly, the Parties and their undersigned counsel agree as follows:

WHEREAS, the Parties in the Action, during the course of this Action, have been and will be

1 presented with discovery requests seeking the production of documents and/or information that the
2 Parties claim to contain trade secrets or other confidential information;

3 WHEREAS, each party maintains that the unprotected disclosure of its trade secret and
4 confidential information will be harmful to the party producing the information; and
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6 WHEREAS, the Parties reserve the right to object to any discovery request that they believe
7 should not require the production of any documents or information;

8 IT IS HEREBY ORDERED that:

9 1. Scope of Order. This Protective Order (“Order”) shall govern the use and disclosure
10 of all alleged confidential, proprietary or trade secret information (“Protected Information”) produced
11 by or on behalf of any party or furnished by any person associated with any party on or after the date
12 of this Order in any pleading, discovery request, discovery response, document production,
13 subpoena, or any other disclosure or discovery proceeding in this Action. Any alleged confidential or
14 proprietary or trade secret information produced in discovery shall only be used for the purposes of
15 preparing for and conducting this Action and only as provided in this Order.
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17 2. Confidentiality Designations. Any party, person or entity producing information in
18 this Action may designate any document, information, thing, or discovery response as protected by
19 marking it at or before the time of production or exchange with the legend “HIGHLY
20 CONFIDENTIAL” or “CONFIDENTIAL”. If it is impracticable to mark something with such a
21 legend (e.g., information contained on a computer hard drive), the designation may be made in
22 writing. All “HIGHLY CONFIDENTIAL” designations must be based on the good faith belief that
23 the information constitutes highly confidential, proprietary or trade secret information requiring
24 protection above and beyond that which is afforded by this Order to documents marked
25 “CONFIDENTIAL”. All “CONFIDENTIAL” designations must be based on the good faith belief
26 that the information constitutes (a) confidential, proprietary or trade secret information or (b)
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1 information subject to a legally protected right of privacy.

2 3. Undertaking. Any documents or materials marked either “HIGHLY
3 CONFIDENTIAL” or “CONFIDENTIAL” shall be held in confidence by each person to whom it is
4 disclosed according to the procedures set forth in this Order; shall be used only for purposes of
5 preparation, trial, and appeal or confirmation of this Action; shall not be used for any business or
6 commercial purpose; and shall not be disclosed to any person who is not authorized to receive such
7 information as provided herein. All documents or materials so marked shall be carefully maintained
8 in secure facilities.
9

10 4. Manner of Designation.

11 a. The designation of documents or other materials shall be made by written notice in
12 the documents or materials by affixing to it, in a manner that shall not interfere with its legibility, the
13 words “HIGHLY CONFIDENTIAL” or “CONFIDENTIAL” on all or any part of the document or
14 thing. Wherever practicable, the designation of “HIGHLY CONFIDENTIAL” or
15 “CONFIDENTIAL” shall be made prior to, or contemporaneously with, production or disclosure.
16 Documents or information designated as “HIGHLY CONFIDENTIAL” or “CONFIDENTIAL”
17 before entry of this Order shall be treated as “HIGHLY CONFIDENTIAL” or “CONFIDENTIAL”
18 within the meaning of this Order. The non-designating party may challenge any designation of
19 confidentiality in accordance with Paragraph 11.
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21 b. All deposition transcripts in this Action shall be treated by all parties as provisionally
22 protected as “HIGHLY CONFIDENTIAL” for a period of fourteen (14) calendar days following
23 receipt of the transcripts. Within the fourteen (14) day period, any party may designate particular
24 portions of a transcript as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” information by
25 giving written notice of such designation to every other party to the Action. To the extent possible,
26 the party making the designation shall be responsible for assuring those portions of the deposition
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1 transcript and exhibits designated “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” are
2 appropriately bound by the reporter. The Parties should avoid designating entire transcripts as
3 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” where only a portion thereof or the exhibits
4 used therewith qualify for protection under this Order; to the extent reasonably practicable, only such
5 portions or exhibits should be designated. Failure of a party to so designate any particular portion of
6 the transcript establishes that such portion is not subject to this Order.

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8 c. In the event that a party is permitted by agreement or by order of the Court to inspect
9 or review documents prior to production, all documents and things produced at such inspection will
10 be considered to be HIGHLY CONFIDENTIAL. At the time documents and things are actually
11 produced, however, an appropriate designation, if any, shall be placed on each document or thing in
12 accordance with this Protective Order.

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14 5. Use and Access of Confidential Information.

15 a. HIGHLY CONFIDENTIAL: Except as set forth herein or in any subsequent order of
16 the Court or by express written consent of counsel of record, no documents, things or information
17 designated as “HIGHLY CONFIDENTIAL” shall be, directly or indirectly, delivered, exhibited or
18 disclosed to persons other than:

19
20 (i) the Court, or any Court personnel, and any court reporter or videographer recording or
21 transcribing testimony in a deposition or hearing in this Action; and

22 (ii) Counsel, and in-house counsel, for the parties and their paralegals, law clerks, and
23 clerical staff who are providing active assistance with this Action; and

24 (iii) any person identified from the four corners of the information, document or thing
25 itself as having authored or previously received the information, document or thing; and

26 (iv) any expert or technical advisor retained or employed by any party for the purposes of
27 this Action, provided that said experts or consultants have executed a certification in accordance with
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Paragraph 6 below; and

(v) other persons who may be specifically designated by consent of all attorneys of record or pursuant to an order of the Court, provided that said person has executed a certification in accordance with Paragraph 6 below; and

(vi) any party or employee of a party under the following conditions only: counsel for the parties may show, discuss and review HIGHLY CONFIDENTIAL information and materials with a party or an employee of a party, but the party or employee of the party may not (1) keep a copy of the HIGHLY CONFIDENTIAL materials; (2) view the HIGHLY CONFIDENTIAL materials outside the direct supervision of counsel; (3) take notes concerning the content of the HIGHLY CONFIDENTIAL materials; (4) discuss or disclose the contents of the HIGHLY CONFIDENTIAL materials with or to other employees (excluding named parties) or third parties unless these third parties are technical advisors (as defined in paragraph 6); and/or (5) use the HIGHLY CONFIDENTIAL materials for any purpose other than in connection with the prosecution or defense of this Action.

b. CONFIDENTIAL: Except as set forth herein or in any subsequent order of the Court or by express written consent of counsel of record, no documents, things or information designated as “CONFIDENTIAL” shall be, directly or indirectly, delivered, exhibited or disclosed to persons other than:

(i) the Court, or any Court personnel, and any court reporter or videographer recording or transcribing testimony in a deposition or hearing in this Action; and

(ii) Counsel for the parties and their paralegals, law clerks, and clerical staff who are providing active assistance with this Action; and

(iii) any person identified from the four corners of the information, document or thing itself as having authored or previously received the information, document or thing; and

1 (iv) the parties to this Action, provided, however, that disclosure may be made only to the
2 extent necessary for the prosecution or defense of this litigation;

3 (v) any actual or potential witness, provided that said witness has executed a certification
4 in accordance with Paragraph 6 below; and

5 (vi) any person testifying at a deposition, provided that said person has executed a
6 certification in accordance with Paragraph 6 below; and

7 (vii) any expert or technical advisor retained, employed, or consulted by any party for the
8 purposes of this Action, provided that said experts or consultants have executed a certification in
9 accordance with Paragraph 6 below; and

10 (viii) other persons who may be specifically designated by consent of all attorneys of record
11 or pursuant to an order of the Court, provided that said person has executed a certification in
12 accordance with Paragraph 6 below.

13 6. Disclosure to Witnesses and Technical Advisers and Certification of Confidentiality.

14 Before giving any witness, or technical adviser access to information, documents or things
15 designated as “HIGHLY CONFIDENTIAL” or “CONFIDENTIAL”, the party’s Counsel who seeks
16 to disclose such information to such witness, or technical adviser shall require the witness or
17 technical adviser to read and agree to be bound by this Order by signing a certification stating the
18 following:
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20 I certify my understanding that documents, information, answers, and responses are
21 provided to me pursuant to the terms and restrictions of the Stipulated Protective
22 Order in Timothy N. Johnson v. CBE (“Order”). I have been given a copy and have
23 read that Order.
24

25 I have had its meaning and effect explained to me by counsel who provided me with
26 the information. I understand that such information and documents, and any copies,
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any notes or other memoranda regarding information in such documents, shall not be disclosed to others except in accordance with that Order, and shall be used only for purposes of this proceeding. I agree to comply with the Order.

The term “technical adviser” shall mean any person, including but not limited to a proposed expert witness or consultant or consulting expert, with whom counsel may deem it necessary to consult concerning technical, financial, or other aspects of this case for the preparation or trial thereof.

7. Safeguarding Confidential Information. The recipient of any “HIGHLY CONFIDENTIAL” or “CONFIDENTIAL” material provided pursuant to this Order shall maintain such information in a secure and safe area and shall exercise due and proper care with respect to its storage, custody and use, so long as it remains so designated.

8. ~~Filing Protected Materials in Court. Unless agreed otherwise by the parties in writing,~~

See order issued concurrently herewith ~~party incorporating Protected Information into a document to be filed in a court shall seek leave to file such protected material under seal.~~

9. Final Disposition. Within ninety (90) days of the conclusion of this Action, including any appeals, all “HIGHLY CONFIDENTIAL” or “CONFIDENTIAL” information furnished pursuant to the terms of this Order, any notes reflecting Protected Information and all copies thereof, which are not in the custody of the Court, shall be returned to the party furnishing that Information or be destroyed (and certified by affidavit as having been destroyed) by the party in possession thereof, provided that counsel for the parties may retain their notes and any work product materials and litigation files.

10. No Presumption of Protected Status. This Stipulated Protective Order does not address discovery objections, nor does it preclude any party from asserting objections to any discovery request for any reason permitted by the applicable rules of civil procedure or as otherwise

1 permitted by law. This Order does not preclude any party from moving for any relief cognizable
2 under rules of civil procedure.

3 11. Challenging Confidential Designation. A party may oppose the designation of
4 protected material by notifying the opposing party in writing. If a party opposes the designation of
5 any particular document or information designated as “HIGHLY CONFIDENTIAL” or
6 “CONFIDENTIAL”, the parties shall make a good faith attempt to resolve the dispute by agreement.
7 If the parties are unable to resolve the dispute, then the party opposing the designation may file a
8 motion with the Court to have the designation modified or removed. The burden remains on the
9 designating party to demonstrate the propriety of the designation. Until a motion is filed and resolved
10 by the Court, all documents and materials with which a confidential designation is being challenged
11 shall be treated in the confidential manner that they have been designated by the producing party as
12 prescribed in this Order. Any motion filed pursuant to this paragraph shall identify with specificity
13 each and every document or piece of information for which a confidentiality designation is being
14 challenged and state the basis for such challenge.
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16 12. Challenging Use of Highly Confidential Documents. A party may oppose the
17 prohibition on providing highly confidential documents to a party by notifying the opposing party in
18 writing. The parties shall make a good faith attempt to resolve the dispute by agreement. If the
19 parties are unable to resolve the dispute, then the party desiring to provide the document to a party
20 may file a motion with the Court to have the ability to show the document to their party. Until a
21 motion is filed and resolved by the Court, all documents and materials with which a highly
22 confidential designation is being challenged shall be treated in the manner that they have been
23 designated by the producing party as prescribed in this Order. Any motion filed pursuant to this
24 paragraph shall identify with specificity each and every document or piece of information for which a
25 challenge is asserted and state the basis for such challenge.
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1 13. Modification of Order. Nothing in this Order shall preclude any party from applying
2 to the Court for an appropriate modification of this Order; provided, however, that before such an
3 application, the parties involved shall make a good faith effort to resolve the matter by agreement.
4 Furthermore, the parties can agree in writing, without approval from the Court, on the exclusion of
5 particular information, documents, answers, or responses from the scope of this Order.
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7 14. Inadvertent Production. The inadvertent production pursuant to discovery by any party
8 of any document or communication that is protected by privilege, work product doctrine or statutory
9 confidentiality will not operate as a waiver of the producing party's right to assert a defense to
10 production of that document or communication, or any other document or communication, and any
11 such material shall be returned promptly to the party producing it on timely written demand
12 identifying the specific document(s). Any information, document or thing mistakenly produced or
13 disclosed without a "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" designation may be
14 subsequently designated by the producing party as "CONFIDENTIAL" or "HIGHLY
15 CONFIDENTIAL" at any time pursuant to the terms of this paragraph without waiving the
16 confidential nature of the document or information. In each such case, the designating person shall
17 provide to all other parties notice, either orally followed by written notice within five (5) business
18 days or by written notice, of that subsequent designation and a copy of the document or thing marked
19 in accordance with this paragraph.
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21 15. Continuing Jurisdiction. Unless superseded by later order, this Order shall remain in
22 full force and effect after the termination of this Action and the parties agree that the Court may
23 enforce the terms of this Order and/or redress any violations thereof.
24

25 16. Non-Parties. The existence of this Order may be disclosed to any non-party producing
26 documents or information in this Action who may reasonably be expected to desire confidential
27 treatment of such information. Such non-parties may avail themselves of the protections of this
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Order. By availing themselves of the protections of this Order, such non- parties consent to the jurisdiction of the Court for purposes of enforcing the terms of this Order only.

17. Exclusions. The restrictions set forth in any of the paragraphs hereof with respect to information, documents or things designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” shall not apply to:

a. any information, document or thing which at the time of disclosure to a receiving party is in the public domain in its protected form;

b. any information, document or thing which after disclosure to a receiving party becomes part of the public domain in its protected form as a result of publication not involving a violation of this Order;

c. any information, document or thing which a receiving party can show was received by it, whether before or after the disclosure, from a source who obtained the information lawfully and under no obligation of confidentiality to the producing party; or

d. to any party who produced the information, document or thing designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.”

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18. Existing Obligations. This protective order shall not be construed as, and does not constitute, a novation of any existing obligations of confidentiality a party may owe another party. To the extent they already exist, all such obligations remain in full force and effect notwithstanding the provisions of this protective order.

IT IS SO ORDERED.


United States Magistrate Judge

Dated: August 10, 2018

IT IS SO STIPULATED:

//S// David H. Krieger

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Dated: 8/8/2018

//S// Trevor R. Waite

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Dated: 8/8/2018

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Exhibit A

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 TIMOTHY N. JOHNSON,

CASE NO.: 2:18-CV-00876

5 Plaintiff,

6 v.

7
8 THE CBE GROUP, INC. D/B/A CBE
9 GROUP,

10 Defendant.

11 AGREEMENT TO MAINTAIN CONFIDENTIALITY

12
13 The undersigned hereby acknowledges and says:

14 I hereby attest to my understanding that information or documents designated
15 “CONFIDENTIAL” are provided to me pursuant to the terms and conditions and restrictions of the
16 Stipulated Protective Order (“the Order”) dated August __, 2018 in the above-styled Action; that I
17 have been given a copy of and have read the Order, and that I hereby agree to be bound by its terms. I
18 also understand that my execution of this Agreement to Maintain Confidentiality, indicating my
19 agreement to be bound by the Order, is prerequisite to my review of any produced materials, as
20 defined in the Order.

21
22 I further agree that I shall not disclose to others, except in accordance with the Order, such
23 information or documents, including notes or other memoranda writings regarding information
24 contained therein, and that such information or documents shall be used only for the purposes
25 authorized by the Order.
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27 I further agree and attest to my understanding that my obligation to honor the confidentiality
28 of such information or documents will continue even after the termination of this Action.

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I further agree and attest to my understanding that, in the event that I fail to abide by the terms of the Order, I may be subject to sanctions.

I further agree to be subject to the jurisdiction of the Court to enforce this Order.

Dated: _____

By: _____

Printed Name: _____

Subscribed and sworn to before me this ____ day of _____.

Notary Public